

SENATE BILL No. 379

DIGEST OF INTRODUCED BILL

Citations Affected: IC 27-2-21; IC 34-46-2-25.4

Synopsis: Internal insurance compliance audits. Makes certain information related to voluntary, internal insurance compliance audits privileged information.

Effective: July 1, 2003.

Alting, Long

January 16, 2003, read first time and referred to Committee on Criminal, Civil and Public Policy.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

SENATE BILL No. 379

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 27-2-21 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2003]:

4 **Chapter 21. Privilege Applying to Internal Insurance**
5 **Compliance Audits**

6 **Sec. 1.** As used in this chapter, "insurance compliance audit"
7 means a voluntary internal evaluation, review, assessment, audit,
8 or investigation for the purpose of:

9 (1) identifying or preventing noncompliance; or

10 (2) promoting compliance;

11 with laws, regulations, orders, or industry or professional
12 standards, conducted by or on behalf of an insurer or activity
13 licensed or regulated under IC 27.

14 **Sec. 2.** As used in this chapter, "insurance compliance audit
15 document" means a document prepared in connection with an
16 insurance compliance audit. An insurance compliance audit
17 document:



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(1) may include:

(A) a written response to the findings of an insurance compliance audit; and

(B) field notes and records of:

(i) observations;

(ii) findings;

(iii) opinions;

(iv) suggestions;

(v) conclusions;

(vi) drafts;

(vii) memoranda;

(viii) drawings;

(ix) photographs;

(x) exhibits;

(xi) computer generated or electronically recorded information;

(xii) phone records;

(xiii) maps;

(xiv) charts;

(xv) graphs; and

(xvi) surveys;

collected or prepared in the course of an insurance compliance audit or attached as an exhibit to an insurance compliance audit; and

(2) includes any of the following:

(A) An insurance compliance audit report:

(i) prepared by an auditor who is an employee of the insurer or an independent contractor; and

(ii) that may include the scope of the audit, the information gained in the audit, and conclusions and recommendations, with exhibits and appendices.

(B) Memoranda and documents analyzing portions or all of an insurance compliance audit report and discussing potential implementation issues.

(C) An implementation plan that addresses:

(i) corrections of previous noncompliance;

(ii) improvement of current compliance; and

(iii) prevention of future noncompliance.

(D) Analytic data generated in the course of conducting the insurance compliance audit.

Sec. 3. As used in this chapter, "insurer" has the meaning set forth in IC 27-1-2-3.

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1 Sec. 4. Except as provided in this chapter, an insurance
2 compliance audit document is privileged information and is not
3 discoverable or admissible as evidence in any civil, criminal, or
4 administrative proceeding.

5 Sec. 5. Except as provided in this chapter, an individual involved
6 in preparation of an insurance compliance audit or insurance
7 compliance audit document is not subject to examination
8 concerning the insurance compliance audit or insurance
9 compliance audit document in a civil, criminal, or administrative
10 proceeding. However, if the insurance compliance audit, insurance
11 compliance audit document, or a portion of the insurance
12 compliance audit or insurance compliance audit document is not
13 privileged, the individual may be examined concerning the portion
14 of the insurance compliance audit or insurance compliance audit
15 document that is not privileged.

16 Sec. 6. The commissioner shall:

17 (1) not provide to any person an insurance compliance audit
18 document provided to the commissioner:

19 (A) voluntarily; or

20 (B) at the request of the commissioner under a claim of
21 authority to compel disclosure under section 11 of this
22 chapter; and

23 (2) treat an insurance compliance audit document as
24 confidential information for purposes of IC 27-1-3-10.5
25 without waiving the privileges established under sections 4
26 and 5 of this chapter.

27 An insurance compliance audit document provided as described in
28 subdivision (1) may not be used for any purpose other than to
29 determine whether disclosed defects in an insurer's policies and
30 procedures or inappropriate treatment of customers has been
31 remedied or that an appropriate plan for remedy is in place.

32 Sec. 7. An insurance compliance audit document that is
33 provided to the commissioner is subject to applicable statutory or
34 common law privilege, including:

35 (1) the work product doctrine;

36 (2) attorney-client privilege; or

37 (3) the subsequent remedial measures exclusion.

38 An insurance compliance audit document provided to the
39 commissioner is the property of the insurer and is confidential.

40 Sec. 8. An insurer that discloses an internal compliance audit
41 document to a governmental entity:

42 (1) voluntarily; or

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(2) as required by law;
 does not waive a privilege established under section 4 or 5 of this chapter with respect to any other person or governmental entity.

Sec. 9. A privilege established under section 4 or 5 of this chapter does not apply to the extent that the privilege is expressly waived by the insurer that prepared or caused to be prepared an insurance compliance audit document.

Sec. 10. A privilege established under section 4 or 5 of this chapter does not apply in the following circumstances:

(1) If a court, after an in camera review, requires disclosure in a civil or administrative proceeding after determining at least one (1) of the following:

(A) The privilege is asserted for a fraudulent purpose.

(B) The material is not subject to the privilege as provided under section 16 of this chapter.

(C) The insurer fails to undertake a reasonable plan of corrective action or eliminate noncompliance with applicable laws within a reasonable period.

(2) If a court, after an in camera review, requires disclosure in a criminal proceeding after determining at least one (1) of the following:

(A) The privilege is asserted for a fraudulent purpose.

(B) The material is not subject to the privilege as provided under section 16 of this chapter.

(C) The material contains evidence relevant to the commission of a criminal offense.

(D) The insurer fails to undertake a reasonable plan of corrective action or eliminate noncompliance with applicable laws within a reasonable period.

Sec. 11. (a) Not more than thirty (30) days after the commissioner, the attorney general, or a pleading party in a civil action makes a written request by certified mail for disclosure of an insurance compliance audit document, the insurer that prepared the insurance compliance audit document or caused the insurance compliance audit document to be prepared may file a petition in a court of competent jurisdiction requesting an in camera hearing to determine whether the insurance compliance audit document or portions of the insurance compliance audit document are subject to disclosure.

(b) Failure by an insurer to file a petition under subsection (a) waives the privilege provided under this chapter for the insurance compliance audit document that is the subject of a request for



disclosure under subsection (a).

(c) An insurer asserting a privilege established under section 4 or 5 of this chapter in response to a request for disclosure under subsection (a) shall include in the insurer's petition for an in camera hearing all of the information listed in section 12 of this chapter.

(d) Not more than thirty (30) days after an insurer files a petition under subsection (a), the court shall issue an order scheduling an in camera hearing to determine whether the insurance compliance audit document or portions of the audit document are privileged or are subject to disclosure.

Sec. 12. An insurer asserting a privilege established under section 4 or 5 of this chapter in response to a request for disclosure under section 11 of this chapter shall provide to the commissioner, the attorney general, or a pleading party in a civil matter, at the time the insurer files an objection to the disclosure, all of the following information:

- (1) The date of the insurance compliance audit document.
- (2) The identity of the person that conducted the insurance compliance audit.
- (3) The general nature of the activities covered by the insurance compliance audit.
- (4) An identification of the portions of the insurance compliance audit document for which the privilege is asserted.

Sec. 13. (a) An insurer that asserts a privilege established under section 4 or 5 of this chapter has the burden of demonstrating the applicability of the privilege.

(b) After an insurer has established the applicability of a privilege under subsection (a):

- (1) the pleading party in a civil action, including the commissioner or attorney general, that seeks disclosure for the cause described in section 10(1)(A) or 10(1)(B) of this chapter has the burden of proving that the privilege is asserted for a fraudulent purpose or that the insurer failed to undertake reasonable corrective action or failed to eliminate noncompliance within a reasonable period; and
- (2) a party, including the commissioner or attorney general, seeking disclosure under section 10(2)(C) of this chapter has the burden of proving the elements of the criminal offense referenced in section 10(2)(C) of this chapter.

Sec. 14. (a) The parties described in section 11 of this chapter may at any time stipulate in legal proceedings before a court under

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1 this chapter to entry of an order directing whether specific
 2 information contained in an insurance compliance audit document
 3 is subject to a privilege established under section 4 or 5 of this
 4 chapter.

5 (b) A stipulation described in subsection (a) may be limited to
 6 the instant proceeding and, absent specific language to the
 7 contrary, is not applicable in any other proceeding.

8 Sec. 15. A privilege established under section 4 or 5 of this
 9 chapter does not extend to the following:

10 (1) Documents, communications, data, reports, or other
 11 information expressly required to be collected, developed,
 12 maintained, or reported to a regulatory entity under this title,
 13 other state law, or federal law.

14 (2) Information obtained through observation or monitoring
 15 by any regulatory entity.

16 (3) Information obtained from a source independent of an
 17 insurance compliance audit.

18 (4) Documents, communications, data, reports, memoranda,
 19 drawings, photographs, exhibits, computer records, maps,
 20 charts, graphs, surveys, and other materials prepared or
 21 maintained in the ordinary course of insurance business and
 22 not in relation to an insurance compliance audit.

23 Sec. 16. (a) If a privilege established under section 4 or 5 of this
 24 chapter does not apply as described in sections 7 and 8 of this
 25 chapter, a court may compel the disclosure of only those portions
 26 of an insurance compliance audit document relevant to issues in
 27 dispute in the underlying proceeding.

28 (b) Information required to be disclosed under subsection (a) is
 29 not public information, and a privilege established under section
 30 4 or 5 of this chapter that otherwise applies to the information is
 31 not waived for purposes of another civil, criminal, or
 32 administrative proceeding.

33 Sec. 17. This chapter does not limit, waive, or abrogate the scope
 34 or nature of a statutory or common law privilege other than a
 35 privilege established under this chapter.

36 SECTION 2. IC 34-46-2-25.4 IS ADDED TO THE INDIANA
 37 CODE AS A NEW SECTION TO READ AS FOLLOWS
 38 [EFFECTIVE JULY 1, 2003]: Sec. 25.4. IC 27-2-21 (Concerning
 39 certain information related to internal insurance compliance
 40 audits).

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